
STATUTORY INSTRUMENTS

2003 No. 2498

The Copyright and Related Rights Regulations 2003

PART 2

AMENDMENTS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

Acts permitted in relation to copyright works and rights in performances

Making temporary copies

8.—(1) After the heading “*General*” appearing before section 29 there shall be inserted—

“Making of temporary copies

28A Copyright in a literary work, other than a computer program or a database, or in a dramatic, musical or artistic work, the typographical arrangement of a published edition, a sound recording or a film, is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable—

- (a) a transmission of the work in a network between third parties by an intermediary; or
- (b) a lawful use of the work;

and which has no independent economic significance.”.

(2) After paragraph 1 of Schedule 2 there shall be inserted—

“Making of temporary copies

1A. The rights conferred by Part 2 are not infringed by the making of a temporary copy of a recording of a performance which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable—

- (a) a transmission of the recording in a network between third parties by an intermediary; or
- (b) a lawful use of the recording;

and which has no independent economic significance.”.

(3) After section 182A(1) there shall be inserted—

“(1A) In subsection (1), making a copy of a recording includes making a copy which is transient or is incidental to some other use of the original recording.”.

Amendment of provision relating to research and private study

9. Section 29 shall be amended as follows—

- (a) for subsection (1) there shall be substituted—

“(1) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.”;
- (b) for subsection (1A) there shall be substituted—

“(1B) No acknowledgement is required in connection with fair dealing for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

(1C) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work.”;
- (c) in subsection (2) for the words “mentioned in subsection (1)” there shall be substituted “of research or private study”;
- (d) after subsection (4) there shall be inserted—

“(4A) It is not fair dealing to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being permitted if done in accordance with section 50BA (observing, studying and testing)).”;
- (e) subsection (5) shall cease to have effect.

Amendment of provisions relating to criticism, review and news reporting

10.—(1) Section 30 shall be amended as follows—

- (a) in subsection (1) after the word “acknowledgement” there shall be inserted “ and provided that the work has been made available to the public ”;
 - (b) after subsection (1) there shall be inserted—

“(1A) For the purposes of subsection (1) a work has been made available to the public if it has been made available by any means, including—

 - (a) the issue of copies to the public;
 - (b) making the work available by means of an electronic retrieval system;
 - (c) the rental or lending of copies of the work to the public;
 - (d) the performance, exhibition, playing or showing of the work in public;
 - (e) the communication to the public of the work,

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.”;
 - (c) in subsection (3) for the words from “, broadcast” to “programme” there shall be substituted “ or broadcast where this would be impossible for reasons of practicality or otherwise ”.
- (2) For paragraph 2(1) of Schedule 2 there shall be substituted—

“**2.**—(1) Fair dealing with a performance or recording for the purpose of criticism or review, of that or another performance or recording, or of a work, does not infringe any of the rights conferred by Part 2 provided that the performance or recording has been made available to the public.

(1A) Fair dealing with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by Part 2.”.

Amendment of provisions relating to things done for the purposes of instruction or examination

^{F1}11.

F1 Regs. 11-14 revoked (coming into force at 00.02 on 1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, [Sch. para. 14](#) Table

Amendment of provisions relating to recordings by educational establishments of broadcasts

^{F1}12.

F1 Regs. 11-14 revoked (coming into force at 00.02 on 1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, [Sch. para. 14](#) Table

Amendment of provision relating to reprographic copying by educational establishments

^{F1}13.

F1 Regs. 11-14 revoked (coming into force at 00.02 on 1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, [Sch. para. 14](#) Table

Amendment of provisions relating to copying by librarians

^{F1}14.

F1 Regs. 11-14 revoked (coming into force at 00.02 on 1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, [Sch. para. 14](#) Table

Observing, studying and testing of computer programs

15.—(1) After section 50B there shall be inserted—

“50BA Observing, studying and testing of computer programs

50BA

(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

(2) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void).”

(2) In section 50A(2) after the word “50B” there shall be inserted “ , 50BA ”3.

Changes to legislation: There are currently no known outstanding effects for the The Copyright and Related Rights Regulations 2003, Cross Heading: Acts permitted in relation to copyright works and rights in performances. (See end of Document for details)

(3) In section 50C(3) for the words “section 50A or 50B” there shall be substituted “ section 50A, 50B or 50BA ”.

(4) For section 296A(1)(c) there shall be substituted—

“(c) the observing, studying or testing of the functioning of the program in accordance with section 50BA.”.

Amendment of provision relating to recordings of folksongs

F216.

F2 Reg. 16 revoked (coming into force at 00.02 on 1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, [Sch. para. 14](#) Table

Amendment of provision relating to the advertisement of sale of artistic work

17. In section 63(2) for the words “or distributed”, there shall be substituted “ , distributed or communicated to the public ”.

Amendment of provisions relating to the playing of sound recordings for the purposes of club, society &c

18.—(1) In section 67(2) for the words from “and” appearing at the end of paragraph (a) to the end of the subsection there shall be substituted—

- “(b) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain,
- (c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation, and
- (d) that the proceeds from any goods or services sold by, or on behalf of, the organisation—
 - (i) in the place where the sound recording is heard, and
 - (ii) on the occasion when the sound recording is played, are applied solely for the purposes of the organisation.”.

(2) In paragraph 15 of Schedule 2, in sub-paragraph (2) for the words from “and” appearing at the end of paragraph (a) to the end of the sub-paragraph there shall be substituted—

- “(b) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain,
- (c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation, and
- (d) that the proceeds from any goods or services sold by, or on behalf of, the organisation—
 - (i) in the place where the sound recording is heard, and
 - (ii) on the occasion when the sound recording is played, are applied solely for the purposes of the organisation.”.

Provisions relating to recording for the purposes of time-shifting

19.—(1) What is now section 70 shall become subsection (1) of section 70.

(2) In the new section 70(1) after the words “The making” there shall be inserted “ in domestic premises ” and after that subsection there shall be inserted—

“(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with—

- (a) it shall be treated as an infringing copy for the purposes of that dealing; and
- (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.

(3) In subsection (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.”.

(3) After paragraph 17 of Schedule 2 there shall be inserted—

“Recording for the purposes of time-shifting

17A.—(1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any right conferred by Part 2 in relation to a performance or recording included in the broadcast.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with—

- (a) it shall be treated as an illicit recording for the purposes of that dealing; and
- (b) if that dealing infringes any right conferred by Part 2, it shall be treated as an illicit recording for all subsequent purposes.

(3) In sub-paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

(4) Expressions used in this paragraph have the same meaning as in section 70.”.

Provisions relating to photographs of broadcasts

20.—(1) For section 71 there shall be substituted—

“71 Photographs of broadcasts

71

(1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any copyright in the broadcast or in any film included in it.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with—

- (a) it shall be treated as an infringing copy for the purposes of that dealing; and
- (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.

(3) In subsection (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.”.

(2) After paragraph 17A of Schedule 2 (inserted by regulation 19(3)) there shall be inserted—

“Photographs of broadcasts

17B.—(1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any right conferred by Part 2 in relation to a performance or recording included in the broadcast.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with—

- (a) it shall be treated as an illicit recording for the purposes of that dealing; and
- (b) if that dealing infringes any right conferred by Part 2, it shall be treated as an illicit recording for all subsequent purposes.

(3) In sub-paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

(4) Expressions used in this paragraph have the same meaning as in section 71.”.

(3) In section 27(6) for the “or” appearing at the end of the entry for section 68(4) there shall be substituted— “ section 70(2) (recording for the purposes of time-shifting), section 71(2) (photographs of broadcasts), or. ”

(4) In section 197(5) at the appropriate place there shall be inserted— “ paragraph 17A(2) (recording for the purposes of time-shifting), or paragraph 17B(2) (photographs of broadcasts), ”.

Amendment of provisions on public showing or playing of broadcast

21.—(1) Section 72 shall be amended as follows—

(a) for subsections (1)(a) and (b) there shall be substituted—

- “(a) the broadcast;
- (b) any sound recording (except so far as it is an excepted sound recording) included in it; or
- (c) any film included in it.”;

(b) after subsection (1) there shall be inserted—

“(1A) For the purposes of this Part an “excepted sound recording” is a sound recording—

- (a) whose author is not the author of the broadcast in which it is included; and
- (b) which is a recording of music with or without words spoken or sung.

(1B) Where by virtue of subsection (1) the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public—

- (a) forms part of the activities of an organisation that is not established or conducted for profit; or
- (b) is necessary for the purposes of—
 - (i) repairing equipment for the reception of broadcasts;
 - (ii) demonstrating that a repair to such equipment has been carried out; or
 - (iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.”.

(2) Paragraph 18 of Schedule 2 shall be amended as follows—

- (a) in sub-paragraph (1)(b) after the words “sound recording” there shall be inserted “ (except so far as it is an excepted sound recording) ”;
- (b) after sub-paragraph (1) there shall be inserted—
 - “(1A) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any right conferred by Part 2 in relation to a performance or recording included in any excepted sound recording which is played in public by reception of the broadcast, if the playing or showing of that broadcast in public—
 - (a) forms part of the activities of an organisation that is not established or conducted for profit; or
 - (b) is necessary for the purposes of—
 - (i) repairing equipment for the reception of broadcasts;
 - (ii) demonstrating that a repair to such equipment has been carried out; or
 - (iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.”.
- (3) After section 128 there shall be inserted—

“128A Notification of licence or licensing scheme for excepted sound recordings

128A

(1) This section only applies to a proposed licence or licensing scheme that will authorise the playing in public of excepted sound recordings included in broadcasts, in circumstances where by reason of the exclusion of excepted sound recordings from section 72(1), the playing in public of such recordings would otherwise infringe the copyright in them.

(2) A licensing body must notify the Secretary of State of the details of any proposed licence or licensing scheme for excepted sound recordings before it comes into operation.

(3) A licence or licensing scheme, which has been notified under subsection (2), may not be operated by the licensing body until 28 days have elapsed since that notification.

(4) Subject to subsection (5), the Secretary of State shall take into account the matters set out in subsection (6) and then either—

- (a) refer the licence or licensing scheme to the Copyright Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or
- (b) notify the licensing body that he does not intend to refer the licence or licensing scheme to the Tribunal.

(5) If the Secretary of State becomes aware—

- (a) that a licensing body has failed to notify him of a licence or licensing scheme under subsection (2) before it comes into operation; or
- (b) that a licence or licensing scheme has been operated within 28 days of a notification under subsection (2),

subsection (4) does not apply, but the Secretary of State may at any time refer the licence or licensing scheme to the Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or may notify the licensing body that he does not intend to refer it to the Tribunal.

(6) The matters referred to in subsection (4) are—

- (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in subsection (7);

- (b) any written representations received by the Secretary of State;
 - (c) previous determinations of the Tribunal;
 - (d) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and the terms of those schemes or licences; and
 - (e) the extent to which the licensing body has consulted any person who would be affected by the proposed licence or licensing scheme, or organisations representing such persons, and the steps, if any, it has taken as a result.
- (7) The factors referred to in subsection (6) are—
- (a) the extent to which the broadcasts to be shown or played by a potential licensee in circumstances mentioned in subsection (1) are likely to include excepted sound recordings;
 - (b) the size and the nature of the audience that a licence or licensing scheme would permit to hear the excepted sound recordings;
 - (c) what commercial benefit a potential licensee is likely to obtain from playing the excepted sound recordings; and
 - (d) the extent to which the owners of copyright in the excepted sound recordings will receive equitable remuneration, from sources other than the proposed licence or licensing scheme, for the inclusion of their recordings in the broadcasts to be shown or played in public by a potential licensee.
- (8) A proposed licence or licensing scheme that must be notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 118 or 125 before such notification takes place.
- (9) A proposed licensing scheme that has been notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 119 after the Secretary of State has notified the licensing body that he does not intend to refer the licensing scheme to the Tribunal.
- (10) If a reference made to the Tribunal under section 118 or 125 is permitted under subsection (8) then—
- (a) the reference shall not be considered premature only because the licence or licensing scheme has not been notified to the Secretary of State under subsection (2); and
 - (b) where the Tribunal decides to entertain the reference, subsection (2) to (5) shall not apply.
- (11) Nothing in this section shall be taken to prejudice any right to make a reference or application to the Tribunal under sections 120 to 122, 126 or 127.
- (12) This section applies to modifications to an existing licence or licensing scheme as it applies to a proposed licence or licensing scheme.
- (13) In this section and in section 128B, any reference to a “licence” means a licence granted by a licensing body otherwise than in pursuance of a licensing scheme and which covers works of more than one author.

128B References to the Tribunal by the Secretary of State under section 128A

128B

- (1) The Copyright Tribunal may make appropriate enquiries to establish whether a licence or licensing scheme referred to it by the Secretary of State under section 128A(4)(a) or (5) is reasonable in the circumstances.

(2) When considering the matter referred, and after concluding any such enquiries, the Tribunal shall take into account—

- (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in section 128A(7); and
- (b) any other factors it considers relevant,

and shall then make an order under subsection (3).

(3) The Tribunal shall make such order—

- (a) in the case of a licensing scheme, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of any description; or
- (b) in the case of a licence, either confirming or varying the proposed licence, as the Tribunal may determine to be reasonable in the circumstances.

(4) The Tribunal may direct that the order, so far as it reduces the amount of charges payable, has effect from a date before that on which it is made.

If such a direction is made, any necessary repayments to a licensee shall be made in respect of charges already paid.

(5) The Tribunal may award simple interest on repayments, at such rate and for such period, ending not later than the date of the order, as it thinks fit.”.

(4) In section 120(1) for the words “section 118 or 119” there shall be substituted “ section 118, 119 or 128A ”.

(5) In section 127(1) for the words “section 125 or 126” there shall be substituted “ section 125, 126 or 128B (where that order did not relate to a licensing scheme) ”.

(6) In section 149 after paragraph (c) there shall be inserted—

“(ca) section 128B (reference by the Secretary of State under section 128A);”.

(7) In section 179 (index of defined expressions: Part 1), at the appropriate place insert—

“excepted sound recording section 72(1A)”.

Amendment of provisions on the reception and re-transmission of broadcasts

F³22.

F3 Reg. 22 revoked (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 34(2)(c)**, 118(6); S.I. 2017/765, reg. 2(n)

Amendment of the provisions on the sub-titling of copies of broadcasts

F⁴23.

F4 Reg. 23 revoked (coming into force at 00.01 on 1.6.2014) by [The Copyright and Rights in Performances \(Disability\) Regulations 2014 \(S.I. 2014/1384\)](#), reg. 1(1), **Sch. para. 8** Table

Changes to legislation:

There are currently no known outstanding effects for the The Copyright and Related Rights Regulations 2003, Cross Heading: Acts permitted in relation to copyright works and rights in performances.